IN THE

Supreme Court of the United States

OCTOBER TERM, 1922, No. 326.

(Was No. 818, October Term, 1920.)

BALTIMORE AND OHIO RAILROAD COMPANY,
Appellant,
vs.
THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

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(28,768)

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922, No. 305.

(Was No. 813, October Term, 1921.)

BALTIMORE AND OHIO RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

STATEMENT.

The cause herein comes to this court on appeal from the Court of Claims.

Appellant, prior to November 12, 1918, and during the month of December, 1917, entered into an informal or implied agreement with the United States on account of negotiations between Lieuten-

ant-Colonel Amos W. Kimball, an officer or agent acting under the authority, direction, or instruction of the Secretary of War of the United States and W. T. Moore, of Locust Point, Baltimore, Maryland, an agent of your appellant for the conversion of the transfer shed of appellant adjacent to Baltimore and Ohio Railroad Company, Pier 6, at Locust Point, Baltimore, Maryland, to a barracks and the installation of necessary plumbing and certain other facilities therein for the accommodation of soldiers of the United States Army, and the building of an additional barrack building 25′ 4″ x 53′ 6″ to the east of said transfer shed equipped with plumbing and other facilities for the accommodation of officers of the said United States Army. The said buildings and facilities were constructed by appellant to meet the urgent needs of the War Department at the request of Lieutenant-Colonel Amos W. Kimball, Expeditionary Quartermaster of the said War Department at Locust Point, Baltimore, Maryland, for quartering soldiers of the United States as such quarters were urgently needed for them on account of the extreme weather conditions and unsuitable quarters then existing, and no written agreement was executed between the United States and appellant for the construction of the said buildings and facilities in the manner prescribed by law. The total amount due appellant for said construction and facilities is $27,117.25, in which amount is included the sum expended for labor

and material as well as the estimated cost, less salvage, of restoring the several buildings and property to their original condition. The facilities and buildings constructed by appellant were solely for the needs of the War Department in quartering troops and are of no value to it for railroad purposes and no part of such expenditure or said construction would have been made but for the aforesaid agreement in the normal development of appellant's property.

Appellant, under date of June 27, 1919, presented its claim to the War Department in the amount of $44,678.98, under the provisions of the Act of March 2, 1919, 40th Statute L., 1272, and, subsequently, under date of March 11, 1920, it amended its claim and reduced the amount to $27,-117.25. Under date of May 18 and 19, 1920, a hearing was held on said claim before the Claims Board, Transportation Service, War Department, and under date of June 7, 1920, the said Claims Board, Transportation Service, War Department, rendered its decision denying relief to appellant on the ground that the appellant had failed to present sufficient evidence to establish any agreement, either express or implied, obligating the United States to pay appellant the amount of its claim. On June 17, 1920, appellant appealed to the Appeal Section, War Department, for relief and under date of July 21, 1920, the said Appeal Section refused to grant relief and on August 9, 1920, appellant appealed to the Secretary of War

and under date of October 29, 1920, that official denied relief to your appellant.

Under date of February 9, 1921, appellant filed its petition in the Court of Claims for the recovery of the amount of its said claim rejected by the Secretary of War, and on March 2, 1921, the United States filed a demurrer to appellant's petition. The demurrer was argued and submitted under date of March 21, 1921, and on March 28, 1921, the Court of Claims entered its order overruling the demurrer filed by the United States.

Appellant and appellee by stipulation placed before the Court of Claims the evidence adduced before the Claims Board, Transportation Service, of the War Department, and upon said evidence the case was heard on the merits by the Court of Claims. On February 13, 1922, the case was argued and submitted upon the merits and under date of March 6, 1922, the Court of Claims handed down Findings of Fact and written opinion dismissing the petition of appellant.

SPECIFICATION OF ERRORS.

I. The Court of Claims erred in dismissing appellant's petition as the findings of fact show an implied agreement under the Dent Act, 40th Statute, L. 1272.

II. The primary duty of the United States troops was to guard Government property at Locust Point, Baltimore, Maryland, and therefore,

the barracks were indispensable to the soldiers of the United States and the Court of Claims erred in not holding the United States is obligated to pay appellant for same.

III. Appellant was not obligated to build barracks free of charge for soldiers of the United States which were taken over and occupied by them from December, 1917, to May, 1919, and the Court of Claims erred in refusing to hold the United States liable for the amount of this claim.

IV. The Court of Claims erred in refusing to render its judgment that appellant under the implied agreement is entitled to the full amount of its claim amounting to $27,117.25.

V. What the Canton Railroad did has no relation whatsoever to this claim and therefore, the findings in regard to said railroad are clearly error.

ARGUMENT.

POINT 1.

COURT OF CLAIMS ERRED IN DISMISSING PETITION.

We respectfully submit that the Court of Claims erred in dismissing the petition in this cause and holding that, "The evidence falls short of showing an agreement that would bind the Government" (Rec., 17) to pay for the construction in question. And yet the court in its decision fails to fully con-

sider its findings of fact in reaching such a conclusion as heretofore stated. Its construction of the Dent Act, we most respectfully submit, cannot be confined to the narrow margin as set forth in the decision. The act deserves and should receive a most liberal construction for its very title indicates such a construction. It is "An act to provide relief in cases of contracts connected with the prosecution of the war and for other purposes." In the letter of the War Department to Congress requesting the legislation this is emphasized as here set forth in part:

> "Yielding to the exigencies of the war situation, such contractors put the work of production ahead of the work of negotiation, and have often put themselves in a position where their only reliance was the good faith and fairness of the Government, in finally fixing the terms of the agreement. For example, in the manufacture of a certain important type of gun it was thought impracticable to determine the proper price basis at the time the order for the production of the gun was given, as there was insufficient experience as to what the cost of manufacture would be and the determination of the price, and so the final execution of the formal contract was left until there would be sufficient actual manufacturing experience for the Government to make a proper determination as to price. Further, there are a number of instances where the Government, in execution of its plans for the erection of a munition plant or the creation of a canton-

ment, induced the occupants of land to vacate it and go to considerable expense without any agreement as to compensation for the purchase or use of the land having been actually reached. With the armistice the plans of the Government have been so charged that the Government cannot properly now proceed with the purchase of the land in question, and there is nothing between the Government and the persons who have vacated their land but a vague, implied agreement to compensate them. * * *

"Nor should the patriotism be penalized of those who in the exigencies of the war have gone ahead to produce instead of waiting to bargain. It is true that such persons have nothing to rely on except the good faith of the United States, but surely there should be no more solid ground for reliance than that good faith."

(House Report No. 877, 65th Congress, 3rd Session.)

The Court of Claims said in its decision:

"By its terms it deals with agreements, express or implied, which so far as affects the Government shall have been entered into by a duly authorized officer or agent, and referring to agreements, express or implied, 'entered into in good faith,' between authorized persons, there should appear the essential element of 'a meeting of the minds.'"

(Rec., p. 15.)

It will be observed that the Court of Claims states in part:

> "between authorized persons, there should appear the essential element of 'a meeting of the minds.'"
>
> (Rec., p. 15.)

but it does not state how this "meeting of the minds" should appear. It has been laid down that minds may meet in several ways in implied contracts but the Court of Claims in its decision deals with "a meeting of the minds" in general terms and is not specific in its application of the phrase. For, as has been said:

> "In implied contracts the parties have capacity to contract; facts, circumstances, few or many, clear or complicated, exist, which lead the minds of the jurors to the conclusion that the minds of the parties met. Minds may meet by words, acts, or both. The words even may negative such meeting, but 'acts which speak louder than words' may conclude him who denies a tacit contract.' Sceva *v.* True, 53 N. H., 627, 629."
>
> (13 Corpus Juris, p. 242.)

And the Court of Claims in a leading case said:

> "Implied contracts in fact do not arise from the denials and contentions of parties, but from their common understanding in the ordinary course of business, whereby mutual intent to contract without formal words therefore is shown. (Hertzog *v.* Hertzog, 29 Pa. St., 465, and authorities there cited; Harley *v.* United States, *supra.*)"
>
> (Knapp *v.* United States, 46 Ct. Cl., 643.)

This court has said:

> "Of implied contracts there are two kinds, first, where a man takes property and the owner waives the tort and sues in assumpsit—*i. e.*, where there is no meeting of minds; second, where the parties meet, and their meeting results in an unexpressed agreement."
>
> (Harley *v.* United States, 39 Ct. Cl. 105 and 198 U. S., 229.)

In Knote *v.* United States, in 95 U. S., at page 149, in defining the jurisdiction of the Court of Claims and what constitutes an implied contract, this court said:

> "The jurisdiction of that court is limited to claims founded upon a law of Congress, or upon a regulation of an Executive Department, or upon a contract, express or implied, with the Government. The claim here presented rests upon a supposed implied contract to pay to the claimant the money received as the proceeds of the forfeited property. *To constitute such a contract, there must have been some consideration moving to the United States; or they must have received the money, charged with a duty to pay it over; or the claimant must have had a lawful right to it when it was reserved as in the case of money paid by mistake.*" (Italics ours.)

It has also been held:

> "An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding. Miller's Appeal, 100 Pa., 568; 45 Am. Rep., 394; Wickham *v.* Weil (Com. Pl.), 17 N. Y. Supp., 518; Hinkle *v.* Sage, 67 Ohio St., 256; 65 N. E., 999; Power Co. *v.* Montgomery, 114 Ala., 433; 21 South., 960; Railway Co. *v.* Gaffney, 65 Ohio St., 104; 61 N. E., 152; Jennings *v.* Bank, 79 Cal., 323; 21 Pac., 852; 5 L. R. A., 233; 12 Am. St. Rep., 145; Deane *v.* Hodge, 35 Minn., 146; 27 N. W., 917; 59 Amm. Rep., 321; Bixby *v.* Moore, 51 N. H., 403."

The Lord and Hewlett case, 217 U. S., 340 (43 Ct. Cls., 282) (Rec., 15), cited by the Court of Claims, we respectfully submit has no application to the instant case. The Lord and Hewlett case did not arise during war time, was not a claim growing out of war time condition, did not involve the constructing of barracks for soldiers, and the taking over of same by the War Department. On the other hand the Lord and Hewlett case dealt with the question as to whether there was a contract of employment between Lord and Hewlett and the Secretary of Agriculture for the employment of Lord and Hewlett as architects of a public building to be

erected by the United States for the use of the Department of Agriculture and because no agreement was ever executed between the claimant and the United States, this court held:

> "the minds of the parties never met as to the terms of any contract in execution of the provisions of the act of February 9th, 1903."

Again in its decision the Court of Claims has sought to further narrow the construction of the Dent Act, for it states:

> "The statutes have regulated the expenditures for permanent barracks and buildings. See Rev. Stat., sec. 1136; Act February 27, 1877, 19 Stat., 242; Act February 27, 1893, 27 Stat., 484; Act June 25, 1910, 36 Stat., 721. The Army Appropriation Act of May 12, 1917, 40 Stat., 74, contains a provision that 'hereafter no expenditure exceeding $5,000.00 shall be made upon any building or military post or grounds, about the same, without the approval of the Secretary of War, upon detailed estimates submitted to him.' And if it may be said that these statutes do not in terms affect a structure such as that in question here, they at least indicate the policy that authority for expenditures shall be vested in a responsible head, who, generally speaking, is the Secretary of War."
>
> (Rec., p. 16.)

And again:

> "The limited authority of an officer is a matter that all persons dealing with him must take notice of, and there is nothing in the occurrences that took place in this case that relieved the plaintiff from the duty to act advisedly in making outlays if it expected the Government to make reimbursement therefor."
>
> (Rec., p. 17.)

We again most respectfully dissent from the above excerpts of the Court of Claims' decision and say most earnestly that while the statutes may indicate a policy of the Government in reposing authority for expenditures in a responsible head such as the Secretary of War, yet the Dent Act makes no such limitations for it distinctly states:

> "That the Secretary of War be, and he is hereby authorized to adjust, pay, or discharge any agreement express or implied, upon a fair and equitable basis that has been entered into in good faith during the present *emergency* and prior to November twelfth, nineteen hundred and eighteen *by any officer or agent acting under his authority, direction, or instruction, or that of the President, with any person, firm, or corporation*, for the acquisition of lands, or the use thereof, or for damages resulting from notice by the Government of its intention to acquire or use said lands, or for the production, manufacture, sale, acquisition, or control of equipment, materials, or supplies, or for services,

> or for facilities, or other purposes connected with the prosecution of the war, when such agreement has been performed in whole or in part, or expenditures have been made or obligations incurred upon the faith of the same by any such person, firm, or corporation prior to November twelfth, nineteen hundred and eighteen, and such agreement has not been executed in the manner prescribed by law." (Italics ours.)
>
> (Section 1, 40th Statute L., 1272.)

As to the limited authority of an officer and notice to be taken of it as well as the plaintiff acting advisedly in making outlays if it is expected the Government is to make reimbursement therefor, as expressed by the Court of Claims in this case being all outside the purview of the Dent Act. It is submitted that appellant in the days of war could ill afford to question the authority of an officer of the rank of Lt. Col. Amos W. Kimball, in view of the responsible assignment held by him, nor could it in those days of stress and emergency, stop to bargain when an imperative situation confronted the Government in providing a temporary barracks for soldiers of the United States who were absolutely needed to guard and protect the property of the United States, as the Court of Claims found that:

> "The primary duty of the troops was to protect Government property and the piers leased by the Government, but generally to guard the whole water front, especially Pier

> No. 6, and to send patrols at various times throughout the railroad yard at Locust Point to guard cars containing property that might be used by the Government, and generally to guard all the piers and all the property at that place."
>
> (Rec., p. 11.)

The decision of the Court of Claims is erroneous, as is clearly shown by its Findings of Fact and the narrow construction it applies to the Dent Act.

POINT II.

IMPLIED AGREEMENT UNDER THE DENT ACT.

In pointing out the implied agreement between appellant and appellee, it is necessary for appellant to confine itself to the Findings of Fact made by the Court of Claims, for in the case of William F. Brothers *v.* United States, this court said:

> "For the purposes of our review the findings of that court are to be treated like the verdict of a jury, and we are not at liberty to refer to the evidence, any more than to the opinion, for the purposes of eking out, controlling, or modifying their scope. United States *v.* Smith 94 U. S., 214, 218; 24 L. Ed., 115; Stone *v.* United States, 164 U. S., 380, 382; 41 L. Ed., 477, 478; 17 Sup. Ct. Rep., 71; District of Columbia *v.* Barnes, 197 U. S., 146, 150; 49 L. Ed., 699, 700; 25

Sup. Ct. Rep., 401; Crocker *v.* United States, 240 U. S., 74, 78; 60 L. Ed., 533, 536; 36 Sup. Ct. Rep., 245, and cases cited."
(250 U. S., 88.)

Before taking up those findings of the Court of Claims which show the existence of an implied agreement under the Dent Act, we respectfully call to the attention of the court the situation of the parties before the making of the implied agreement. In Finding 2 the Court of Claims has found:

> "About September 1, 1917, Lieut. Col. Amos W. Kimball, was ordered for duty at Baltimore, Md., to establish an expeditionary depot and to take charge of all supplies arriving at that place for transportation to New York and other ports for shipment to Europe. In working out his plans he visited Canton, a suburb of Baltimore, on the Chesapeake Bay, and succeeded in securing from the Canton Railroad Company an option on the largest pier at that place, known as Pier No. 3. He afterwards visited Mr. Willard, the President of the Baltimore & Ohio Railroad Company, who promised to lease to the Government Pier No. 6, which was then under construction for $150,000 a year. The deal was closed about September 15, 1917, but the lease was not executed until October, 1917, after which the pier was rushed to completion. Pier No. 6 was located at Locust Point, another suburb of Baltimore, on the Chesapeake Bay, across the river from Canton. The

> Baltimore & Ohio Railroad Company owned eight piers at Locust Point, numbered from 1 to 9, No. 7 never having been constructed. These piers and the property on and around them were guarded at that time by civilian employees of the railroad companies" (Rec., pp. 9-10).

It will be noted that the court does not find that appellant had anything to do with Lieutenant-Colonel Kimball's coming to Baltimore but that he was ordered there "to establish an expeditionary depot and to take charge of all supplies arriving at that place for transportation to New York and other ports for shipment to Europe" (Rec., p. 9). It will be observed that this was quite an undertaking, and as early as October, 1917, the United States closed a deal for the leasing of appellant's Pier No. 6, at Locust Point (Rec., p. 10). Appellant had 8 piers at Locust Point and all were guarded at that time by civilian employees of appellant (Rec., p. 10). Under date of October 30, 1917, appellant's Pier No. 9 was destroyed and its Pier No. 8 damaged, and much other property belonging to appellant was destroyed by a fire supposed to be of incendiary origin (Rec., p. 10). The very next day after the fire, October 31, 1917, Colonel Kimball reported the fire to Washington by telephone and requested that a guard be sent to Locust Point immediately (Rec., p. 10). Finding 3 does not disclose why the guard was immediately desired but Finding 2 does disclose that the United

States had leased Pier No. 6 from appellant which was located at Locust Point, and said finding also shows that Piers 8 and 9 were located at Locust Point; therefore, the close proximity of Pier 6 leased by the Government to Pier No. 9 destroyed and Pier No. 8 damaged by the fire of incendiary origin (Rec., p. 10) undoubtedly gave Colonel Kimball much apprehension for he immediately asked for a guard, which we must assume was for the protection of Government property on Pier 6, as the Court of Claims found that appellant's other piers were guarded at the time by civilian employees of appellant (Rec., p. 10). Why Colonel Kimball called on Mr. Thompson after asking for the guard from the War Department is not explained (Rec., p. 10) by the finding, unless it was to request some temporary quarters for the guard. Surely an officer of the United States Army would not call upon a civilian to ask him to secure the guard in view of the rank of Lieutenant-Colonel Kimball and the important assignment given him, as shown by Finding 2. Therefore, the only correct conclusion to be drawn from Finding 3 is that Colonel Kimball called on Mr. Thompson to secure some temporary quarters for the guard he had asked to be sent to Locust Point, for when the guard was ordered to Locust Point on the night of November 3, 1917, they were not ordered to report to Mr. Thompson but to "Colonel Amos W. Kimball, quartermaster of the expeditionary depot, at Baltimore, who would advise as to the details of

their duties." Findings 5 and 6 show that the quarters furnished by appellant was a wrecking train and was merely temporary, for the troops were only on the train from November 3, 1917, to November 9, 1917 (Rec., p. 11).

PRIMARY DUTY OF TROOPS.

The Court of Claims has found why the troops were sent to Locust Point as disclosed by Finding 5, as follows:

> "The primary duty of the troops was to protect Government property and the piers leased by the Government, but generally to guard the whole water front, especially Pier No. 6, and to send patrols at various times throughout the railroad yard at Locust Point to guard cars containing property that might be used by the Government, and generally to guard all the piers and all the property at that place" (Rec., p. 11).

WEATHER CONDITIONS AT LOCUST POINT.

In Finding 6 the Court of Claims has found:

> "The weather during the fall and winter of 1917-18 was very cold and inclement. The soldiers of the guard were for the most part Baltimoreans and their parents and other relatives visited them frequently. There was some sickness among the troops" (Rec., p. 11).

It will thus be seen that the *weather conditions* and the *primary duty* for which the troops were sent to Locust Point, undoubtedly gave Colonel Kimball much concern for the Court of Claims has found:

> "On a number of occasions when the weather was very cold, Colonel Kimball had remarked that the troops ought to have better quarters. Mr. Moore suggested fitting up the old unused transfer shed near Pier No. 6, and Colonel Kimball agreed that it would be a fine thing to make the men as comfortable as possible" (Rec., pp. 11-12).

REQUEST FOR BUILDING OF BARRACKS.

We respectfully submit that the above finding of the Court of Claims shows that Colonel Kimball was the moving party in desiring barracks for the soldiers and the suggestion of Mr. Moore to fitting up the transfer shed came as a result of Colonel Kimball's remarks. He was the moving party and he was concerned in looking after the men because the Court of Claims has found that "There was some sickness among the troops" (Rec., p. 11) and "The weather during the fall and winter of 1917-18, was very cold and inclement" (Rec., p. 11).

The Court of Claims does not find that appellant was concerned with the care of the troops, for that was a matter for Lieutenant-Colonel Kimball, but the finding does show a co-operation upon the part of appellant to assist Lieutenant-Colonel Kimball.

Mr. Moore, agent of appellant, after Lieutenant-Colonel Kimball had discussed with him that the troops ought to have better quarters, did not proceed with any construction until he had first seen the superior officers of appellant and obtained authority to refit the transfer shed for the troops Even when the plans for refitting the shed were under way, Major Edgar suggested "the amount of the facilities that would be required" (Rec., p. 12). The barracks were constructed and were taken over by soldiers of the United States in December of 1917, and occupied by them until May, 1919 (Rec., p. 12). The findings do not disclose any objection by the superior officers of Lieutenant-Colonel Kimball or the Secretary of War to taking over the barracks. Neither do the findings show that Lieutenant-Colonel Kimball was ever taken to task by his superior officers for exceeding his authority in the premises, if he really did so.

We respectfully submit that the findings of the Court of Claims show an implied agreement under the Dent Act, in that the acts and language of Lieutenant-Colonel Kimball show a request for the barracks, for Webster defines a request as an 1. "Act or an instance of asking for something or some action desired; expression of desire" (page 1811, Webster's New International Dictionary) and also the act of suggesting the amount of the facilities by Major Edgar, the construction of the barracks by appellant, the taking over of the same

by the United States troops also show a consideration moving to the United States, for the facilities were connected with the prosecution of the war, and there was no gift of such facilities by appellant to the United States and said implied agreement, therefore, comes squarely under section 1 of the Dent Act.

The Court of Claims fails to point out the implication of a promise to pay upon the part of the United States as shown by the entire findings, for when the troops took over the barracks immediately that implication was very clearly shown, for the United States is bound, under the implied agreement, to pay for the said barracks. The Government is in no different position than an individual when it contracts with one of its citizens, for it has been held:

> "When a government enters into a contract with an individual, it deposes, as to the matter of the contract, its constitutional authority and exchanges the character of a legislator for that of a moral agent with the same rights and obligations as an individual."
>
> (Lyons *v.* United States, 30th Ct. Cl., 352.)

And this court has said:

> "The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf. All obligations which would be implied

against citizens under the same circumstances will be implied against them."
(U. S. *v.* Bostwick, 94 U. S., 53.)

In Finding 7 the Court of Claims said:

"No Government officials connected with the work at Locust Point in 1917 had any authority to order the construction of the temporary barracks in question, and no orders were given by them, or any of them, for the construction of such building. The subject of compensation was not mentioned in any conversations between army officers and railroad officials until over a week after the building had been completed, when Mr. Moore told Major Edgar that he thought the Government ought to reimburse him for some of his trouble in the matter."
(Rec., p. 12.)

The above finding, so far as the authority of the Government officials at Locust Point is concerned, is hardly consistent with the attitude and acts of Lt.-Col. Kimball and Major Edgar as disclosed by Finding 6. The Dent Act is broad enough to cover both of these officials in fixing their authority for it provides "by any officer * * * acting under his authority, direction or instruction," (Sec. 1, 40th L. 1272) meaning the Secretary of War. Here were two officers of the Army looking after the welfare of the soldiers of the United States and under their command said soldiers took over and occupied these barracks built by appellant as a

result of the acts and language of the moving party Lt.-Col. Amos W. Kimball as disclosed by Finding 6. The Court of Claims in its decision states:

> "Assuming, however, there may be cases of exigency when an officer, to properly care for the troops under his command, may incur unusual, or at the time unauthorized expenses, that cannot be the case where there is plenty of time before incurring the expense to ask for and to receive the necessary authority. At all times of the day communication between Baltimore and Washington was open; the troops remained in tents from November 9 to December 22; the president of the railroad company was at the head of one of the most important war boards, and could readily have conferred with the War Department."
>
> (Rec., pp. 16-17.)

The court by its findings shows that there was an emergency at Locust Point by Findings 4, 5, and 6, so there is no need for further discussion of same. However, we wish to state that appellant's president had no reason to confer with the War Department and none is shown by the findings. This was a case of emergency in war time when every good citizen was co-operating with the Government and endeavoring to help win the war. The Dent Act was enacted subsequently to the Armistice to take care of a situation of this kind, and being a remedial statute deserves most liberal construction.

Under the said implied agreement the detailed

amount of appellant's claim (Rec., pp. 6-7-8 and 14), there is due and owing appellant the sum of twenty-seven thousand, one hundred seventeen dollars and twenty-five cents ($27,117.25) for which judgment should be rendered.

The Dent Act, as has already been shown, is for the purpose of providing relief in a situation as is disclosed by the findings in this case and the Court of Claims erred in not finding an implied agreement under said act and awarding judgment for appellant for the amount of its said claim.

POINT III.

WHAT THE CANTON RAILROAD COMPANY DID HAS NO RELATION TO THIS CLAIM.

The Court of Claims in its Finding No. 9 said:

> "The Canton Railroad Company at a cost of about $5,000 provided comfortable accommodations for the guard sent over daily from Loucust Point to protect Government and railroad property at Canton and has presented no claim therefor."
>
> (Rec., p. 13.)

We are unable to understand why the court has made such a finding, for appellant has made no claim in its petition (Rec., 1 to 8, inclusive) for the Canton Railroad Company. What that road did or did not do is of no concern in the instant claim. The Court of Claims might just as well have in-

cluded in its findings that the Pohick Railroad Company in Alaska had done the same thing as the Canton Railroad Company, if such were a fact, so far as the relevancy of the matter is concerned. We respectfully submit and earnestly insist that all findings as to what the Canton Railroad Company did are entirely beside the issues of this case and therefore totally irrelevant in determining the existence of an implied agreement between the United States and appellant.

CONCLUSION.

It is respectfully submitted that the judgment of the Court of Claims should be reversed and that judgment should be rendered in favor of appellant under the implied agreement in the amount of $27,117.25.

Very respectfully,

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